IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9080 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

USMANMIYA ABBASMIYA PATHAN THROUGH WIFE - FATEMABIBI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9080 of 2002

MS RATNA VORA for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/01/2003

ORAL JUDGEMENT

#. By way of this petition, the detenu has challenged his detention order dated 7.5.2002. By the impugned

order, the detenu is detained in exercise of the powers under Section 3(1) of the Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of dangerous activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, it is mentioned that criminal case is filed against the detenu, which is pending at Gomtipur Police Station, being 0163/2000, under Sections 324, 323 and 294(B) of IPC as well as under Section 135(1) of the Bombay Police Act. Another criminal case, which is mentioned in the said grounds of detention, is registered at Gomtipur Police Station, being 0159/2001, under Section 324 of IPC read with Section 135(1) of the Bombay Police Act. It is also mentioned in the said grounds that, both cases are pending against the detenu before the competent criminal court. The last case, which is mentioned in the grounds of detention, is the case registered at Gomtipur Police Station, being 0112/2002 dated 2.5.2002, under Section 326 of IPC read with Section 135(1) of the Bombay Police Act. It is mentioned in the grounds of detention that, in the first two cases, the detenu was released on bail and so far as the last case registered on 2.5.2002 is concerned, the petitioner tried to inflict injury to one person, who was passing through Gomtipur Navghadia Chawl. It is mentioned in the grounds of detention that the detenu is a "dangerous person" and because of his illegal activities, public order is disturbed. The said detention order is challenged by the detenu on various grounds.

#. On behalf of the detenu, it is argued that, so far as two incidents, which are mentioned in the grounds of detention, are concerned, they are stale incidents and the same have no connection with the impugned detention order in view of remoteness of the incidents in question. It is further argued that, even otherwise, aforesaid two cases, viz., Case Nos.0163/2000 and 0159/2001, relate to individual dispute and by no stretch of imagination, can it be said that, by the aforesaid two cases, public order is disturbed, in any manner.

#. Considering the nature of the aforesaid two cases, there is substance in the say of the detenu, as, in my view, the said two cases can never be said to be of such type, by which, it can be presumed that, public order is disturbed. Apart from the aforesaid fact, the said two

incidents are also of remote past, as, the detention order is passed in May, 2002, while the said cases are of August, 2000 and August, 2001 respectively. So far as the last case, being 0112/2002 is concerned, it is, no doubt, true that the said case is filed in connection with the incident, which had taken place on 2.5.2002. However, so far as the aforesaid case is concerned, it is an admitted fact that the detenu is already in judicial custody and he has not been released on bail in connection with the said case. Reading the grounds of detention, it is clear that, nowhere the detaining authority has mentioned that, even though, the detenu is in judicial custody, either he is likely to get bail in the said case, or that in such case, bail application is pending at his instance. Except making a reference that, he is in judicial custody, nothing further is stated in the detention order as to why still it is necessary to detain the detenu under the preventive order even though he is in judicial custody at the time when the detention order is passed.

#. Learned advocate for the petitioner has fairly stated that, even the bail application, which was subsequently filed by the detenu, was also rejected by the Sessions Court. Learned advocate has relied upon the decision of the Apex Court in the case of Amritlal and other Vs. Union Government, reported in AIR 2000 SC 3675, wherein the Apex Court in paras 4, 5 and 6 observed as under.:

"4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 CriLJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under

Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

5. It is this reasoning which the learned advocate contended that the High Court should have held to be completely erroneous in the matter of being the basis of an order of detention.

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is `likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the `likelihood of his moving an application for bail' which is different from `likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down."

#. In the instant case, the detaining authority has not stated anything, whether the detenu is likely to be released on bail, whether he has moved any application for bail etc. The detention order is completely silent on these points altogether. In that view of the matter, this petition deserves to be allowed on the aforesaid ground, as, the detaining authority has not stated anything as to why the detenu is still required to be detained by way of preventive detention, even though he is in judicial custody.

#. At this stage, learned advocate, for the petitioner, after taking instructions from his client, states that the detenu will not move any application for bail at least for a couple of months in the aforesaid pending case. This statement is merely recorded. However, it is not for this Court to suggest anything on this aspect, as, it is ultimately for the competent Court to decide the bail application on its own merits and in accordance with law. This order is confined only qua the merits of the detention order.

#. For the reasons recorded as above, the petition is allowed. The order of detention dated 7.5.2002 is quashed and set aside. The detenu, Usmanmiya Abbasmiya Pathan, is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)

(pathan)